

Citation: *S. T. v. Canada Employment Insurance Commission*, 2014 SSTAD 370

Appeal No. AD-13-299

BETWEEN:

S. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Late Application and Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: December 15, 2014

DECISION

[1] The Tribunal grants the request for an extension of time to file the application requesting leave to appeal but refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On June 26, 2013, a panel of the board of referees determined that:

- The allocation of earnings was calculated in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the “*Regulations*”);
- A penalty was imposed in accordance with section 38 of the *Employment Insurance Act* (the “*Act*”) for making a misrepresentation by knowingly providing false information to the Commission;
- A notice of violation was issued in accordance with section 7.1 of the *Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on September 16, 2013.

ISSUES

[4] The Tribunal must decide if it will allow the late application and if the appeal has a reasonable chance of success.

THE LAW

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (the “*DESD Act*”), “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[6] Subsection 58(2) of the *DESD Act* provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

ANALYSIS

[7] Subsection 58(1) of the *DESD Act* states that the only grounds of appeal are the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] The Tribunal finds that it is in the interest of justice to grant the Applicant’s request for an extension of time to file his application for permission to appeal without prejudice to the Respondent.

[9] In regards to the application for permission to appeal, the Applicant needs to satisfy the Tribunal that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[10] The Applicant has not identified any errors of jurisdiction or any failure by the board of referees to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which the board of referees may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[11] The Applicant is asking this Tribunal to re-evaluate and reweigh the evidence that was put before the board of referees which is the province of the trier of fact and not of an

appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the board of referees.

[12] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard and the Applicant has not satisfied the Tribunal that the appeal has a reasonable chance of success.

CONCLUSION

[13] The Tribunal grants the request for an extension of time to file the application requesting leave to appeal but refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine

Member, Appeal Division